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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ZIONESS MOVEMENT, INC.,

Plaintiff,

v.

21-CV-07429 (AKH)

THE LAWFARE PROJECT, INC.,

Defendant.

Trial

New York, N.Y.
March 5, 2024
10:00 a.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge
-and a Jury-

APPEARANCES

FELICELLO LAW, P.C.

Attorneys for Plaintiff

BY: ROSEANNE E. FELICELLO

KRISTIE M. BLASE

MICHAEL J. MALONEY

OVED & OVED LLP

Attorneys for Defendant

BY: AARON SOLOMON

DARREN OVED

TIMOTHY SAVITSKY

ALSO PRESENT: JARROD BERNSTEIN

ZIPORAH REICH

O35RZIO1

(In open court)

THE COURT: Good morning, everyone. Any questions before we begin? Please be seated.

MS. FELICELLO: Your Honor, we do have some housekeeping matters to take care of.

THE COURT: I can't hear you. You need to speak --

MS. FELICELLO: Sorry. We do have some housekeeping matters to take care of.

THE COURT: We'll take care of them right now.

MS. FELICELLO: Okay. The first one is very minor, your Honor. My partner Michael Maloney may have to step out during some of the proceedings. Just wanted to let you know.

THE COURT: I don't care. He doesn't need my permission. We don't have any passkeys to go to the bathroom here.

MS. FELICELLO: Thank you, your Honor. In docket 1888 that you recently issued, we said that we would deal with adverse inferences at trial. You had already made a determination about some adverse inferences in docket 120, and plaintiff relied on those adverse inferences in both preparing for trial and preparing the proposed jury instructions. We'd like to discuss those with you.

THE COURT: Witnesses will be appearing, right?

MS. FELICELLO: Witnesses will be appearing, yes, your Honor.

O35RZIO1

1 THE COURT: Both sides consented to that, right?

2 MS. FELICELLO: Excuse me?

3 THE COURT: Both -- who is shaking their head at me?

4 MR. OVIED: That's me.

5 THE COURT: Do I need you to shake your head to say
6 I'm right or wrong?

7 MR. OVIED: Sorry, your Honor.

8 MS. FELICELLO: Your Honor, the adverse inferences had
9 to do with the ownership of the trademark and the separate --

10 THE COURT: Don't mention trademark. It has to do
11 with what goes on at trial. That's the subject of testimony by
12 Amanda Berman and by Brooke Goldstein.

13 MS. FELICELLO: Yes, your Honor.

14 THE COURT: I'll get to adverse inferences if and when
15 the issue arises, but I can't tell you anything in advance
16 about it.

17 MS. FELICELLO: Okay. Can I just direct your
18 attention, your Honor, to docket 120 in which you ordered that
19 ZMI is entitled to the inferences that LPI and ZMI functioned
20 as independent entities.

21 THE COURT: Because there was an absent witness but
22 now the witness is here.

23 MS. FELICELLO: No, your Honor that was related to
24 sanctions on The Lawfare Project because of their failure to
25 produce a competent witness.

O35RZIO1

1 THE COURT: But now the witness is coming, right.

2 MS. FELICELLO: I assume that their witness will be
3 appearing, your Honor.

4 THE COURT: Yeah, you consented to it.

5 MS. FELICELLO: I did not consent.

6 THE COURT: What else do you have?

7 MS. FELICELLO: Okay. There's a few other things. We
8 would like to discuss the proposed jury instructions.

9 THE COURT: Not at this time.

10 MS. FELICELLO: Okay.

11 THE COURT: That will be when it's time for it.

12 MS. FELICELLO: Just one clarity on the docket 120,
13 are you rescinding that order you issued in docket 120?

14 THE COURT: What is docket 120?

15 MS. FELICELLO: That's the adverse inference order --

16 THE COURT: Didn't I just tell you what I'm going to
17 do with adverse inference.

18 MS. FELICELLO: I just wanted to make clear --

19 THE COURT: Don't make clear. Did you hear what I
20 said?

21 MS. FELICELLO: Yes, your Honor.

22 THE COURT: What else?

23 MS. FELICELLO: I wanted to see if the witnesses are
24 going to appear 40/20 or have the witness appear once with each
25 party taking their turns.

O35RZIO1

1 THE COURT: Have you had a trial before?

2 MS. FELICELLO: Yes, your Honor but different judges
3 handle it different ways.

4 THE COURT: We go according to a trial. When one side
5 finishes then the other one starts.

6 MS. FELICELLO: Thank you, your Honor. We have two
7 demonstratives that we like to use, one in the opening, one in
8 the closing. How would your Honor like --

9 THE COURT: Just show me after jury selection and make
10 sure your adversary sees it.

11 MS. FELICELLO: Okay. Thank you. We have binders of
12 exhibits. Would you like for those to be presented to the jury
13 or how would you like to handle that?

14 THE COURT: You have what?

15 MS. FELICELLO: Binders full of exhibits.

16 THE COURT: Give them to my law Clark.

17 MR. COLEMAN: Okay. There's two witnesses that we
18 understand will be remote, your Honor.

19 THE COURT: Brooke and Ms. Jones.

20 MS. FELICELLO: Okay. Thank you. We attempted to
21 reach agreement with opposing counsel on some of the objections
22 to the exhibits -- but we were unable to -- they didn't respond
23 to our --

24 THE COURT: I'll take the objections as they came in.

25 MS. FELICELLO: Excuse me? I didn't hear you.

O35RZIO1

1 THE COURT: I'll take the objections as they come in.
2 Are we ready for the jury?

3 MS. FELICELLO: Are the exhibits that are not objected
4 to deemed admitted, or are you still going to rule on them,
5 your Honor?

6 THE COURT: I don't know. I'll rule on them as they
7 come in.

8 MS. FELICELLO: Okay. I think that's all I had on my
9 list. Thank you, your Honor.

10 THE COURT: Yes, sir.

11 MR. SOLOMON: Good morning, Judge. One issue is that
12 Brooke Goldstein from Lawfare, her son fell ill last night so
13 she didn't fly in this morning, she's flying in later. Is it
14 possible for her to observe today via Zoom.

15 THE COURT: No. We'd have to set it up.

16 MR. SOLOMON: That's fine, Judge, thank you.

17 THE COURT: If we have to take the testimony today
18 because you told me that witness can't come today and it's the
19 first witness. We're going to have jury selection and openings
20 today, and start the testimony at 10:00 tomorrow morning.

21 (Continued on next page)
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O35RZIO2

1 (A jury of eight was impaneled and sworn)

2 THE COURT: Did you all say "I do"?

3 JUROR: I do.

4 JUROR: I do.

5 JUROR: I do.

6 JUROR: I do.

7 THE COURT: All right. As I told you previously, your
8 function is going to be to be the triers of fact. You will
9 listen to all the evidence in the case, and based on all the
10 evidence and my legal instructions, you will then be able to
11 come to a true verdict. I will not interfere with your being
12 the triers of fact, and you have to take the law as I give it.

13 A general word about evidence: There are two kinds,
14 direct and circumstantial. Contrary to what you may have
15 heard, each category of evidence is worthy of the same kind of
16 attention as everyone else. And there can be strong
17 circumstantial evidence and weak circumstantial evidence,
18 strong direct evidence and weak direct evidence, and mistaken
19 direct evidence and improper inferences. It's all a mix. We
20 depend on you, the jury, to bring your common sense and your
21 experience in life to bear to find out which witnesses are
22 credible and which are not, which inferences should be made and
23 which should not. There's no inherent strength or weakness to
24 evidence. Each type of evidence has its own strength and its
25 own weakness.

O35RZIO2

1 Direct evidence is that which we see or hear or read,
2 that appeals directly to our senses, and we can report that.
3 Circumstantial evidence is evidence that we reason from some
4 other type of evidence. For example, if all the shutters are
5 closed and someone comes in dripping with rain, with water, you
6 can assume it was raining outside. That's circumstantial
7 evidence. As I say, each can be strong and each can be weak,
8 and I'll give you rules at the end of the case for deciding the
9 credibility of the witnesses and the inference to take from
10 witnesses.

11 Now, it's very important to follow a number of rules.
12 First, evidence is here in the courtroom, not outside the
13 courtroom. Do not do any research on the internet or anywhere
14 else. You'll be hearing about trademarks. Don't look them up.
15 You'll be hearing from different witnesses. Don't look them
16 up. Everything will come that you need to decide in this
17 courtroom. Now, why do we say that? We say that because every
18 piece of evidence here, for a number of reasons, can be checked
19 and cross-examined by the lawyers. So you have the benefit of
20 their history with this case, their experience with this case
21 and their ability to question witnesses on the case, so it's
22 better to be able to separate what is exaggerated, what's real,
23 what's true and what is not. That's the first reason.

24 The second reason is that you are all equal. No juror
25 is entitled to more judgment because that juror may have

O35RZIO2

1 17 degrees as opposed to someone who has no degrees. You each
2 have your common sense in which to deliberate and work
3 together. No juror is an expert as to any other juror. You
4 are all equal. Now, if someone does research and reports to
5 that jury, that person becomes a witness, not a juror, and
6 tries to abrogate weight and experience to himself than anyone
7 else because he has more knowledge. He gained it on the
8 internet. No, no. You're equal, and you cannot bring any kind
9 of knowledge of something else and some kind of subject into
10 the jury room. All the evidence that you need, all the
11 information that you need will come from here.

12 Now, as the evidence comes in, lawyers will object.
13 They're entitled to object, and I'll rule on the objections.
14 The lawyers can only say one word. They will say, "Objection."
15 They are not going to give any speeches. It's not going to be
16 like television. No lawyers will give a speech unless in
17 opening or in closing. If you object, it's one word. You
18 stand up, "Objection." I'll rule. There will be no sidebars
19 unless I need them. If I don't need a sidebar, you can ask for
20 it. I'm not going to give it to you.

21 This trial will be efficient. I understand that you
22 are giving time from your lives, so we'll have an efficient
23 trial, and I hope an interesting trial so that you can look
24 upon this experience as a valuable experience in your life, and
25 you will be doing justice to the parties. There's no higher

035RZIO2

1 calling in this country, in this democracy with all its
2 troubles, than doing justice, doing justice between two people
3 in a controversy, finding the facts and ruling according to the
4 law.

5 Evidence comes in piecemeal. You'll hear one witness,
6 another witness. They may not all be in a chronology, and they
7 may not fit together until the end of the case. Your job is to
8 keep an open mind; open until the very end of the case, until
9 all the evidence is in, until you've heard the summations of
10 the lawyers, and you hear my legal instructions. It's very
11 important. Because if you try to summarize the case or feel
12 that you have a handle on the case before its finished, you
13 tend to close up your mind to the process, and you try to look
14 for ways supporting your reasons. So you must keep an open
15 mind.

16 The second thing, don't discuss the case with anyone
17 else, and don't discuss the case amongst yourselves until it's
18 over. Then it will be time for deliberating. Again, when you
19 tend to talk about the case, you tend to reach certain
20 conclusions in your mind and your mind will start to close if
21 it's not open and fair and impartial to the very end. So don't
22 do research. Don't engage in conversations about the case, not
23 with anyone else.

24 Now, you may be on social media, and if you say I've
25 got this case and you talk about it, other people will talk to

O35RZIO2

1 you about it. And so, again, it's a danger that your mind will
2 close up or be influenced by information outside of this jury
3 room. Don't use social media in any way having to do with this
4 trial during this case. I doubt that there will be any
5 newspaper references. If there are, don't pay attention to
6 them. Or radio references or TV references, don't pay
7 attention to them. The only important thing is coming out of
8 this jury box and the documents that come into evidence.

9 Now, we will begin our day at 10:00 a.m. We cannot
10 begin until every one of you jurors is here and the lawyers are
11 here as well. So if anyone is late, everyone will be late and
12 we impose on everyone else. So we must be on time. Those of
13 you who travel from a distance, or even a short distance and
14 use buses and subways, know that they are prone to delay.
15 Account for that because if you are delayed, it imposes on
16 everyone else. If it's inevitable and you are delayed,
17 Ms. Jones will give you a telephone number to call so you can
18 let us know. And she will take your number so in case we have
19 to communicate with you, we'll be able to do that.

20 The lawyers and the parties are not to talk to you,
21 not even to say, hello or goodbye or how are you. If they see
22 you in the elevator, they must exit the elevator. There must
23 be no contact between the lawyers and anyone on the jury. We
24 concern ourselves not only with justice but with the appearance
25 of justice as well. The lawyers will address you formally in

O35RZIO2

1 court and nowhere else. And it's important for you not to
2 gather anywhere. If you come early, go directly into the jury
3 room. We're going to try and have coffee for you, and you wait
4 in the jury room. Do not linger in the hallways, and do not
5 make eye contact or do anything else with the lawyers.

6 Today we're going to hear the openings of the lawyers.
7 Tomorrow we'll start with the witnesses. And as I said, we
8 will not be working on Friday. Today is Tuesday, we'll be
9 working today in a very limited way and tomorrow and Thursday.
10 On Thursday, we're going to have to stop at 4:00. We've got 45
11 minutes to lunchtime. I think we can have the openings now and
12 then we'll break, and you'll be able to go home for the day and
13 come back tomorrow at 10:00.

14 Is that a good plan? Yes?

15 JUROR: Sorry, I missed this before. You think it's
16 going to take like a week, you said? Around there?

17 THE COURT: Say again.

18 JUROR: How long do you think we'll be here for the
19 whole trial? A week, I think you said.

20 THE COURT: About seven days.

21 JUROR: I'm sorry. I think you addressed this, but if
22 I'm unavailable the week of the 18th --

23 THE COURT: Sorry?

24 JUROR: If I'm unavailable the week of the 18th?

25 THE COURT: We're not going that far. We'll be

O35RZIO2

1 finished before that.

2 Ms. Jones, are you giving out the notebooks?

3 THE DEPUTY CLERK: Can I get ten minutes and bring
4 them into the back?

5 THE COURT: We're going to give you notebooks so those
6 of you that want to take notes can take notes. If you take
7 notes, they are only for yourself. You cannot prove a point to
8 another juror through your notes. Your notes are just useful
9 as a reminder to yourself. Some people are good at taking
10 notes. Some people, not so good. Some people just prefer to
11 hear the testimony rather than take notes. For some, it helps
12 you to hear; others, it gets in the way. You do what is good
13 for you. Those of you who take notes, take notes.

14 If you have questions about the jury, about the things
15 that come up, you can send me a note or ask me. This trial is
16 to give you information. The problem about that is that the
17 lawyers know what they are going to do and something comes up
18 in sequence, it's not always the right sequence. But if you
19 have questions, you can ask me. We'll run a trial that will
20 give you the information you need to make an informed judgment.

21 I don't think I've charged you about preponderance of
22 the evidence. I will at the end, but I might as well tell you
23 about it now. A civil case is decided by a preponderance of
24 the evidence. If you think of a scale, a weight scale, the
25 person who has to prove a point has to prove it to tip the

O35RZIO2

1 scale ever so slightly. If the person fails to tip that scale,
2 the person has failed in its burden of proof. If it's equal,
3 it does not prove the point. You have to tip the scale ever so
4 slightly to prove a point by a preponderance of the evidence.
5 The plaintiff has a burden to prove the case by a preponderance
6 of the evidence, but if there are defenses in the case,
7 sometimes defendant will have a burden with regard to a
8 defense. We'll get to that at the end of the case, and I'll
9 instruct you.

10 Ms. Jones needs a couple of minutes to get you the
11 notebooks, and then we'll hear the openings of the lawyers.
12 And then we'll break for lunch, and you'll have the rest of the
13 day free.

14 Yes?

15 MR. OVIED: Your Honor, perhaps we could have a sidebar
16 addressing the --

17 THE COURT: I can't hear you.

18 MR. OVIED: Perhaps we can have a sidebar addressing
19 the exhibit they want to show the jury at the opening, the
20 demonstrative aid.

21 THE COURT: Take the podium. I'm not able to hear
22 you.

23 MR. OVIED: I said, while the jury is taking their
24 attendance, perhaps we can have a sidebar to address that
25 demonstrative aid that was presented to us.

O35RZIO2

1 THE COURT: All right. Yes. Come in the robing room.
2 You can stay in your place. We'll be finished with this in
3 five minutes.

4 THE DEPUTY CLERK: Judge, I'm going to take the jury
5 in the back.

6 THE COURT: You want to go in the back?

7 THE DEPUTY CLERK: Yes.

8 THE COURT: Okay. Go with Ms. Jones. Don't discuss
9 the case. Drew will pick up the questionnaires.

10 Be seated, please. Did you lose something?

11 JUROR: Yes. It's okay. Thank you.

12 (Jury not present)

13 THE COURT: Let's get to the demonstratives.

14 MS. FELICELLO: Should we put it on the screen, your
15 Honor?

16 THE COURT: That's going to be in evidence, isn't it?

17 MS. FELICELLO: Yes. It's from Plaintiff's
18 Exhibit 60.

19 THE COURT: What do you want to do with it?

20 MS. FELICELLO: We have it blown up as a cardboard.
21 We would like to show it to the jury in my opening.

22 THE COURT: Any objection?

23 MR. SOLOMON: Yes, Judge. It's not a demonstrative.
24 It's not used to be a presentation of evidence. It's an
25 excerpt of Plaintiff's Exhibit 60, and it's --

O35RZIO2

1 THE COURT: Your objection is sustained. This will be
2 evidentiary, and it will come in. The purpose of an opening is
3 not to prove the case, it's to inform the jury how the case
4 connects one to the other. You'll have time to do that at the
5 end.

6 MS. FELICELLO: Okay. Thank you.

7 MR. SOLOMON: Thank you, Judge.

8 THE COURT: Anything else?

9 MS. FELICELLO: Not at this time.

10 MR. SOLOMON: Nothing for the defense.

11 MS. FELICELLO: One thing, your Honor. Is it possible
12 to have a microphone at the bench because it's really difficult
13 for all of us to hear you?

14 THE COURT: I'll put on my microphone.

15 MS. FELICELLO: Thank you, your Honor.

16 THE COURT: I am sorry about that.

17 MR. OVIED: Thank you. I will say, your Honor, that
18 your hearing must be impeccable because you have no problem
19 hearing anybody here, and I can't hear anybody. It's amazing.

20 THE COURT: It's not so good.

21 (Pause)

22 THE DEPUTY CLERK: Are you ready, Judge?

23 THE COURT: Ready.

24 THE DEPUTY CLERK: I'll bring them out in a second.

25 (Jury present)

O35RZIO2

Felicello - Opening

1 THE COURT: How long will your opening be?

2 MS. FELICELLO: About 15 to 20 minutes, your Honor.

3 THE COURT: And how long will yours be, Mr. Solomon?

4 MR. SOLOMON: I'll do the opening, your Honor, about
5 15 minutes.

6 THE COURT: Would you want to have lunch and come back
7 because this can run to, you know, 1:30 or 2:00.

8 JUROR: We're fine with doing it now.

9 THE COURT: Okay. Go ahead.

10 MS. FELICELLO: May I approach the podium?

11 MS. FELICELLO: Good afternoon, your Honor, ladies and
12 gentlemen of the jury. My name is Roseanne Felicello, and I,
13 together with my team, represent Zioness Movement, Inc.

14 As Judge Hellerstein mentioned to you, this a
15 trademark infringement matter. I'll will not describe for you
16 some of the key facts that will be coming into evidence in this
17 matter through the witness and documents that you'll see. As
18 you listen to the testimony and review the documents, I want
19 you to keep one thing in mind: Not any witness is going to
20 have the full story or provide all of the evidence that you
21 will need to reach a conclusion in this matter in favor of
22 Zioness on its claims. Rather, each witness, each document is
23 like a piece of a puzzle, and it will be at the end of the
24 proceeding that we'll put the pieces together and see the
25 evidence clearly and see that Zioness has proven its claims.

O35RZIO2

Felicello - Opening

1 Some pieces of the puzzle are obviously larger and more
2 important in the matter than others, but no one piece is
3 complete.

4 I will start now by describing how those pieces -- how
5 some of those pieces fit together, but it will be at the end of
6 trial that I'll speak to you again and put it all together for
7 you. The first question that you might have is: What is
8 Zioness Movement? It's a nonprofit, New York entity, and the
9 evidence will show that it was established by Amanda Berman in
10 February 2018. It's a progressive and Zionist organization
11 that educates and motivates. Ms. Berman and her team engage in
12 speaking engagements, write op-eds and promote the idea of
13 Zioness.

14 You will hear that the Zioness Movement operates with
15 its own board of directors, submits its own tax returns,
16 maintains its own financial accounts and is a completely
17 independent organization. The evidence will also show that
18 Zioness Movement applied for a trademark in the word "Zioness"
19 back in April 2018. The mark was then published for opposition
20 by the United States Patent and Trademark Office, and no
21 opposition was submitted to the mark. In due course, in
22 May 2020, the U.S. Patent and Trademark Office registered the
23 trademark to Zioness Movement, Inc.

24 With that background, you might be wondering why
25 you're here to help resolve a dispute about the ownership of

O35RZIO2

Felicello - Opening

1 the trademark Zioness. Let me explain. You will hear claims
2 by defendant, The Lawfare Project, that it owns the trademark
3 in Zioness rather than Zioness Movement. So what is The
4 Lawfare Project and what is its relationship to Zioness? The
5 evidence will show that The Lawfare Project is a not-for-profit
6 District of Columbia entity. It operates as a nonprofit law
7 firm, and it was established by Brooke Goldstein, who was its
8 founder and executive director. Ms. Goldstein a public figure
9 known for her conservative views, who frequently appears in the
10 media. The evidence will show that the law firm brings
11 lawsuits in favor -- in support of Jewish rights.

12 The evidence will also show that from March 2015 to
13 December 31, 2018, Amanda Berman worked as an employee at The
14 Lawfare Project. She was an attorney for The Lawfare Project,
15 and she was the main attorney for The Lawfare Project working
16 on an important case that The Lawfare Project had brought in
17 connection with issues happening at the San Francisco State
18 University. That matter was gearing up for trial in March of
19 2019. You will also hear that Amanda's employee agreement with
20 The Lawfare Project specifically permitted her to work on
21 outside pursuits during her employment at Zioness -- sorry, at
22 The Lawfare Project.

23 Where does Zioness fit in? The evidence will show
24 that the first time the word "Zioness" was used as a brand was
25 when Amanda and Brooke together, and about a dozen others who

O35RZIO2

Felicello - Opening

1 were unrelated to The Lawfare Project, attended what is called
2 SlutWalk in Chicago in August 2017. What is SlutWalk? I
3 didn't know what it was either before I started working on this
4 case. The SlutWalk is a progressive demonstration against rape
5 culture.

6 The evidence will show that the organizers of the
7 SlutWalk had previously said that Stars of David were not
8 allowed at the walk, that participants in the walk couldn't
9 wear the Jewish symbol and also participate in this progressive
10 walk against rape culture. Soon -- a few days prior to the
11 walk, they relented and said, Okay, you can wear your Stars of
12 David. And based on that, Amanda, who the evidence will show
13 is a progressive, comes from a progressive background, saw an
14 opportunity to bridge a gap by participating in the event as
15 progressive Zionists.

16 Amanda and Brooke decided to recruit some others to
17 join them under the Zioness brand and to march as a core unit
18 in support of Zioness also wearing the Stars of David and
19 branding related to Zioness. They did not have any attire or
20 insignia referencing The Lawfare Project. They never promoted
21 themselves while they were there as being members of the
22 Lawfare Project or employees of The Lawfare Project. And the
23 evidence will show that there was no connection between their
24 appearance at the SlutWalk and their work for The Lawfare
25 Project, which, again, is a nonprofit law firm, not a protest

O35RZIO2

Felicello - Opening

1 organization. The Lawfare Project did not pay for Amanda's
2 time to attend the SlutWalk event, and Amanda and Brooke told
3 the then chair of The Lawfare Project, Lawrence Hill, that
4 their attendance was for Zioness, not Lawfare Project. After
5 their appearance at the SlutWalk, which gained a lot of
6 attention in the media, interest in the idea of Zioness grew.
7 The evidence will show that there seemed to be a need for this
8 progressive and Zionist pro-female organization to exist and
9 donors were interested.

10 At the beginning, you will hear evidence that Brooke
11 caused The Lawfare Project to provide -- to advance some of the
12 early costs associated with the Zioness Movement for t-shirts,
13 things like that. But the evidence will also show that Amanda
14 was always the face of Zioness, and media coverage portrayed
15 her as the founder with no objection by Brooke. You will hear
16 that Brooke attended one other event as part of Zioness in
17 October 2017, but that she then soon lost interest. And by
18 November 2017, Brooke told Amanda that Lawfare was not going to
19 advance any additional costs, all costs that had been advanced
20 would need to be repaid. Once Amanda went out and set up this
21 organization, which she also recognized and Amanda was planning
22 to do. Amanda agreed, and you will see documents showing that
23 Amanda requested an accounting from the Lawfare Project as to
24 what was owed so The Lawfare Project could be paid back. That
25 accounting was never provided.

035RZIO2

Felicello - Opening

1 The evidence will also show, also, in 2019 Amanda
2 continued to work at The Lawfare Project and also continuously
3 continued to build up Zioness Movement. She registered Zioness
4 Movement, as they discussed, as a separate entity in
5 February 2018. She formed an independent board of directors.
6 There was no overlap between the board of directors of Zioness
7 Movement and The Lawfare Project. She opened a bank account
8 over which no one at Lawfare Project had any control, and she
9 began to raise money for Zioness. All of this was out in the
10 open. The evidence will show that Brooke Goldstein and the
11 board of directors of the Lawfare Project were aware of these
12 activities and generally supportive. Brooke, in fact, was
13 generally supportive, but she knew she was not directing the
14 activities as well.

15 The evidence will show that Brooke did not always
16 agree with some of the progressive messaging put out by Zioness
17 on its Facebook page or in literature or in the news, but she
18 knew and recognized that she did not have any control over the
19 Zioness messaging. In fact, the evidence will show that she
20 acknowledged that Amanda owned a trademark in the word
21 "Zioness."

22 By the end of 2018, Amanda was ready to devote her
23 full-time resources to Zioness Movement and leave The Lawfare
24 Project. She informed Brooke in late November or early
25 December, and at the beginning -- at first, Brooke was

O35RZIO2

Felicello - Opening

1 supportive of Amanda leaving to run Zioness full time. The
2 evidence will show that she took her out for dinner. She gave
3 her a hug. You'll see an email, which she sent in mid
4 December, wishing Amanda the best, wishing her success in her
5 endeavor in this new organization. And she placed no
6 conditions on Amanda's departure from The Lawfare Project.

7 Within a few weeks, however, by the end of December
8 prior to Amanda's last official day at The Lawfare Project,
9 which would have been December 31, Brooke had Ben Ryberg, the
10 COO of The Lawfare Project, turn off Amanda's access to her
11 email and her documents at The Lawfare Project.

12 The evidence will show that this was problematic.
13 Because remember I mentioned that Amanda was working on that
14 significant case for The Lawfare Project that was about to go
15 to trial in March of 2019. Even after her planned departure
16 from The Lawfare Project, Amanda had agreed that she would
17 continue to work on that trial on behalf of the clients of the
18 Lawfare Project. But in order to do that, she needed access to
19 her documents that were at the Lawfare and on The Lawfare
20 Project servers. And in fact, Lawfare Project's cocounsel in
21 that important trial in San Francisco was Lawrence Hill --
22 sorry, counsel was Winston Strong, which was the law firm that
23 the then chairman of the Lawfare Project, Lawrence Hill, was
24 associated with.

25 So let me just be clear about that. We have Lawrence

O35RZIO2

Felicello - Opening

1 Hill, who was then the chairman of the board of The Lawfare
2 Project. He was also a partner at a law firm called Winston
3 Strong. Winston Strong was the large law firm that was
4 cocounseling on The Lawfare Project on the San Francisco State
5 litigation that was going to trial in March 2019. His firm,
6 his partners, desperately wanted Amanda to continue working on
7 the trial. And so, he expressed objection to Brooke about
8 shutting down Amanda's access to her email. And you'll see
9 this in evidence. There are emails showing his disagreement
10 with Ms. Goldstein. In fact, the evidence will show that the
11 dispute was so untenable that Mr. Hill resigned from the board
12 of directors at The Lawfare Project over Brooke's actions
13 against Ms. Berman.

14 But all of this also shows that the evidence -- sorry.
15 The evidence also shows that none of these issues that Brooke
16 professed to have against Amanda at the end of December 2018,
17 and her reason for cutting off her access to the email, had
18 anything to do with the trademark. They had nothing to do with
19 the trademark. There was no emails or text messages or any
20 documentary evidence from Brooke in this time period expressing
21 any concern about Amanda leaving Lawfare Project to run Zioness
22 or her use of the Zioness mark.

23 In fact, Brooke did not assert that The Lawfare
24 Project had a superior right to the Zioness trademark until
25 months after the San Francisco state case settled, which was in

035RZIO2

Felicello - Opening

1 the spring of 2019. The evidence will show that it wasn't
2 until June of 2019, about six months after Amanda Berman left
3 her employment at The Lawfare Project, that The Lawfare Project
4 added to its website the language that it founded, incubated
5 and funded the Zioness Movement. The Lawfare Project website
6 did not include this language in 2017, and it did not include
7 this language in 2018.

8 The evidence will also show that Zioness Movement
9 never mentioned to its bookkeeper or accountant or auditor that
10 it had a trademark or any trademark rights at all to include in
11 the books and records of The Lawfare Project.

12 Despite this evidence that I described that you will
13 see and hear through trial, Lawfare would like you to find that
14 it first used the mark Zioness as a brand identifier in
15 August 2017, continued to use it and did not abandon it. The
16 facts as will be shown in the evidence just do not support The
17 Lawfare Project's claims.

18 The evidence will show that in August 2020, about a
19 year after The Lawfare Project added the statement to its
20 website, Brooke calls The Lawfare Project to file a petition to
21 cancel the Zioness Movement's trademark in the U.S. Patent and
22 Trademark Office. This is an administrative proceeding with
23 more limited discovery and more limited damages that can be
24 achieved. It's simply an injunctive order that can be received
25 that the mark is either canceled or not canceled.

O35RZIO2

Felicello - Opening

1 Also, a few months later in October 2020, the evidence
2 will show that the Twitter handle @TheSmartZioness appeared.
3 This handle sometimes wrote messages that were critical of
4 Zioness Movement and other times claimed to be Zioness
5 Movement, and sometimes wrote messages that were critical of
6 just of Amanda Berman.

7 After The Lawfare Project refused to meaningfully
8 participate in the discovery process in front of the United
9 States Trial and Patent Appeal Board, which is the PTAB in
10 which they filed a petition to cancel, and because of the
11 existential threat to the organization of canceling the word
12 "Zioness" or "Zioness Movement," Zioness was forced to come to
13 this Court and file this claim. That would cover for the
14 continuing infringement and the reputational harm that The
15 Lawfare Project was causing by continuing to claim that it
16 founded, incubated and funded Zioness Movement.

17 The evidence will show that Zioness Movement has spent
18 significant sums on legal fees to defend against this
19 Lawfare -- unleashed by The Lawfare Project against its former
20 employee. Zioness Movement seeks to recover for the harm
21 caused to The Lawfare Project to the Zioness brand and
22 reputation.

23 Zioness is unapologetically progressive. You'll see
24 that in the evidence. You'll also see in the evidence that is
25 the polar opposite of the values expressed by Brooke Goldstein

O35RZIO2

Solomon - Opening

1 and associated with her organization, The Lawfare Project. But
2 improperly claiming ownership and founding the Zioness Movement
3 on The Lawfare Project's website, Brooke has maligned the
4 reputation of Zioness by associating it with conservative
5 views.

6 On behalf of Zioness Movement, I thank you for your
7 service and your time. Thank you very much. I'll be back to
8 speak to you at the end of the trial.

9 THE COURT: Defense opening.

10 MR. SOLOMON: Good afternoon. My name is Aaron
11 Solomon. I'm a partner at the law firm of Oved & Oved, and
12 with me today, my partner Darren Oved and my associate, Tim
13 Savitsky. We represent The Lawfare Project. We start off by
14 thanking you-all for taking time away from your families, your
15 jobs and everything you have going on, and focusing on the two
16 parties in this case and helping us come to a resolution.

17 As you've heard from opposing counsel, no one disputes
18 that the trademark Zioness was used for the first time in
19 August 2017. But by who? Who used it first in commerce? You
20 just heard from opposing counsel that their position is there's
21 no connection between the use of the word "Zioness" on
22 August 12, 2017, at the Chicago SlutWalk, which sounds as weird
23 for me to say in court as it is for you to hear, there was no
24 connection between the two whatsoever.

25 The reality is the term "Zioness" was a mark, a

O35RZIO2

Solomon - Opening

1 trademark, that was cultivated, incubated, funded and done, for
2 lack of a better word, by Lawfare. Let's back up to the summer
3 of 2017. Lawfare is a not-for-profit organization. Its
4 mission is to fight anti-Semitism, and it does it in many
5 different ways. It's a civil rights organization protecting
6 the minority people, Jewish people. How does it do it?
7 Sometimes it files lawsuits on behalf of plaintiffs; people who
8 feel they have personally experienced anti-Semitism. It does
9 speaking engagements. It does grassroots movements. It does
10 communications and education. There are a myriad of ways it
11 does what it is, but what it does is fight anti-Semitism.

12 The executive director for all the time it matters,
13 from inception to today, is Brooke Goldstein. She's the
14 executive director of The Lawfare Project. What does that
15 mean? She sets the agenda. What projects are we going to do?
16 How are we going to do them? Who is going to do them? Tells
17 people what to do. We will do this. I want this by Monday. I
18 want this by Tuesday. I want to have this ready by Monday.

19 (Continued on next page)
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0354ZIO3

Solomon - Opening

1 MR. SOLOMON: She gives deadlines.

2 In summer of 2017 you have Brooke Goldstein, and
3 you'll meet her. You have Amanda Berman, she is the director
4 of legal affairs for the Lawfare Project. And you have Ben
5 Ryberg. He is the COO. He handles websites. He handles
6 payment of bills. He's integral as well.

7 As opposing counsel mentioned, 2017 in the summer
8 there was an event happening in Chicago called The SlutWalk.
9 It was a march designed to demonstrate against violence against
10 woman, sexual abuse, rape culture, domestic violence. But
11 there was an issue, and antisemitic issue which was that while
12 that group allowed certain cultures and certain people to bring
13 their national symbols, their flags, the Jewish people weren't
14 allowed to bring their flags. That was a problem for The
15 Lawfare because it fit directly with what The Lawfare does, it
16 fights antisemitism, that was a problem for Brooke Goldstein.

17 While opposing counsel may make it sound like Brooke
18 and Amanda just went to the SlutWalk. They just went there
19 like you would go to the Yankee game tonight. They didn't.
20 The reality is it wasn't casual. Lawfare, before the SlutWalk,
21 which is August 12, 2017, begins a campaign. What do they do?
22 They a PR company already in place that public relations
23 company is called Miller Inc. What they do is they go back to
24 Miller Inc., that Lawfare has an engagement letter with and
25 that Lawfare pays and says, we're doing a new campaign. We

0354ZIO3

Solomon - Opening

1 need a word for it. We need a term to bring to this March.

2 And they have a new arrangement with the PR company. Who has
3 that arrangement? Lawfare. Who pays that company? Lawfare.

4 And the first thing that PR company does is they try
5 to come up a term, a word for Lawfare to use at this March.

6 One word that's generated is "Zioness." Brooke responds

7 immediately in an email, love it. Love it. Amanda responds
8 she likes it to. But she would prefer "Zioness Slut."

9 Amanda's response is, in sum and substance, that may not be
10 going over so well with the ACLU and some other things. More
11 importantly, we want this term, this logo, this name, to live
12 beyond this march. We want to use it in connection with other
13 stuff Lawfare does. We don't want to do just go to this march,
14 the SlutWalk. Zioness Slut, SlutWalk that's a one-and-done.
15 We want this to be used in connection with all of the
16 progressive things that Lawfare does.

17 Because contrary to what you are going to hear,
18 Lawfare is a not-for-profit organization that fights
19 antisemitism. It is not conservative, liberal, progressive,
20 right wing, left wing. It fights antisemitism. The people who
21 work there have their own beliefs.

22 And it is true and everyone recognized that Brooke
23 Goldstein has appeared on conservative media outlets. She has
24 been on Fox News. So recognizing that, and from day one, there
25 was to be some sort of separation between Lawfare publicly and

0354ZIO3

Solomon - Opening

1 the Zioness term. But we'll get into that in a few minutes.

2 First, let's go back. You have Miller Inc. creating
3 the mark. You got Lawfare paying for it. Then you have the
4 idea, not only do we want to bring a term to this march, we
5 want to bring posters. We want to have T-shirts. Who doesn't
6 love T-shirts, right? So what are they going to do, they hire
7 a creative design company. Who hires them? Lawfare. Who pays
8 them? Lawfare. The creative design company comes up with
9 different designs, images. Brooke edits them. Brooke gives
10 final approval. Brooke gives deadlines. Brooke critiques
11 them. Brooke makes the final decision.

12 Now, the next thing that happens is a website, let's
13 have a website, Zioness.org. Who registers it? Lawfare. Who
14 pays for it? Lawfare. The company who registered it with --
15 excuse me, not the company who registered it, the company that
16 hosts it, I'm not a web guy. The company who hosts it is
17 Wix.com, that's the platform. The invoices from Wix.com goes
18 to Ben Ryberg at Lawfare. Lawfare registers the domain name,
19 Zioness.org The password for anyone to edit that domain name,
20 Lawfare.

21 And before they go to the SlutWalk, Lawfare wants to
22 issue a statement, a press release to its donors to its
23 supporters, to anyone who might want to be interested in going
24 to going to this or to get attention to it. So they have the
25 PR company draft one of those too. Who edits it? Brooke. And

O354ZIO3

Solomon - Opening

1 Brooke's edits are very important. She edits it to say, put
2 something in about Lawfare. So you'll see that the
3 introduction the world gets, the press release the world gets
4 about Zioness includes -- and I think it's Paragraph 2 -- if
5 you love Lawfare, check out its new project, Zioness, that's
6 the sum and substance of it.

7 And Amanda puts that edit in for Brooke. Why?
8 Because Brooke is the boss. So when Brooke says, that's the
9 edit that should go in, there is colloquy, but Brooke has the
10 final say on what goes in. And that's on August 6, 2017, the
11 press release goes out to Lawfare's contacts. Amanda sends
12 that email, that's true, to Lawfare's contacts, which she has
13 access to because she is a Lawfare employee. She sends it from
14 her account, @Lawfare.com. The bottom email has her signature
15 block, Amanda Berman, Lawfare.com.

16 Now, armed with these T-shirts, posters, the slogan,
17 "Zioness," Amanda and Brooke go to the SlutWalk in Chicago on
18 August 12, 2017. They fly out there -- because we are in New
19 York, it's in Chicago -- with tickets paid for by Lawfare.
20 They stay in a hotel paid for by Lawfare.

21 And it is a hit. This movement gets attention. And
22 this whole time and thereafter everyone is looking to Brooke
23 for direction. She makes edits. She sets the agenda. She
24 gives deadlines.

25 As I said before right off the bat, everyone knew this

O354ZIO3

Solomon - Opening

1 progressive campaign can't really have Brooke be the frontman
2 of it or front person of it because Brooke has been on Fox
3 News. It might not be very normal to have a Fox News talking
4 head at a march with progressive issues. So that's discussed
5 openly. And the decision is made that Amanda -- while Brooke
6 is the showpiece and the spokesperson for Lawfare, Amanda will
7 be the public figurehead of Zioness.

8 September 2017, now that this thing is something that
9 they need to protect, they discuss with their *pro bono*
10 attorneys, Winston & Strawn. Lawfare has *pro bono* counsel.
11 Why? It's an organization that does philanthropic things.
12 Winston & Strawn has agreed to do work for them for free. They
13 reach out to their contact at Winston & Strawn and say, we have
14 this trademark, what can we do? He goes at least you can put a
15 TM on it, trademark, write that on there, and we will help you
16 guys register the trademark. Who is the client going to be?
17 Lawfare. Amanda is on that email, she says nothing because
18 Lawfare is running this project. This is a project of The
19 Lawfare.

20 Now, we have T-shirts. We have posters. We are going
21 to do other marches. We need donations. So people who want to
22 donate are going to click on a PayPal button and send money in.
23 But whose PayPal account is it? Lawfare's. So the same issue
24 comes up, wait a second, the people who are really super-duper
25 progressive may not want to donate to Lawfare. Maybe they

O354ZIO3

Solomon - Opening

1 will, maybe they don't. What do we do? And it's discussed
2 between Amanda, Brooke, the PR company, and Ben. And Amanda
3 says, yeah, it's not ideal that there would be a Lawfare
4 receipt you'd get when you want to donate to Zioness, you get a
5 Lawfare receipt. But in her words, she is OK with it because
6 it is definitely a project of The Lawfare.

7 Around October of 2017 there is chatter online
8 regarding Brooke being involved in the Zioness movement. The
9 Zioness movement is pitched, from the get-go, as having
10 co-founders. Amanda is one of them. No one ever says who the
11 other one is. You know, why? Because it's Brooke. But the PR
12 company says, listen, we need to have a public face to this.
13 We have to disassociate Brooke from this. So now we have the
14 issue is we need to get donations, we can't really have Brooke
15 be the figurehead, what should we do? We'll start a new
16 501(c)(3), a new charity to receive the donations from the
17 Zioness project. No problem.

18 But here is the deal, Lawfare owns the trademark they
19 already do. It exists the minute it's used in commerce. So
20 Brooke agrees with Amanda, you can use it. It's a great
21 project. You're doing great work. Keep doing your job at
22 Lawfare, which is going to be this Zioness project amongst
23 other things. Everyone wears many hats. Keep doing it.
24 Lawfare will let you use it and give you a license for the
25 trademark -- although no one calls it a license because we're

0354ZIO3

Solomon - Opening

1 not trademark attorneys. We'll let you use the trademark, but
2 you've got to do two things. One, this new company, when it
3 starts making money, has got to pay us back for the money we
4 shelled out to get this off the ground because we are not going
5 to make any more money off it. And two, you got to fly
6 straight. We don't control you directly, but you've got to do
7 stuff The Lawfare would be OK with. Yes, you are progressive.
8 We know that. God bless you. But you can't go off the rails.
9 We have a license. You have to listen to us, that's the deal.
10 And a new 501(c)(3) is formed beginning in February 2018, and
11 Brooke does what she does. She doesn't lose interest, she
12 moves on to the next project. Amanda's in place. She's taking
13 care of it. She's got it. What is the next thing we have to
14 fight? What's the next injustice we have to take care of?

15 Now, towards the end of 2018, Brooke and Amanda do
16 butt heads because Brooke is the boss of Lawfare. She doesn't
17 like everything that Amanda is doing with Zioness. That's the
18 occupational hazard of being the boss, people don't like being
19 told what to do. So they start butting heads and in the end of
20 2018 Amanda decides she is quitting. She's leaving. She does,
21 and that's OK. That's fine. She is going to run Zioness,
22 which is that's fine. She's devoted so much of her time to it
23 anyway, what's the difference? Fine. No problem. But the
24 deal doesn't change. Lawfare owns the trademark. We're
25 letting you use it. You've got to pay us back and fly

0354ZIO3

Solomon - Opening

1 straight.

2 But then they start going through emails and they find
3 out, because Amanda wouldn't turnover her work product, that
4 unbeknownst to Lawfare, she filed the trademark for Zioness in
5 the name of the new company. Now, it's true we didn't file a
6 petition to cancel her trademark application right away. We
7 didn't put opposition right away because we are a
8 not-for-profit. This is a waste of a not-for-profit's money,
9 being here. Our job is to take the donations we get and fight
10 antisemitism, not fight trademark disputes with our former
11 employees. We tried to resolve it. We sent not one, not two,
12 not three, but four cease-and-desist letters to her. She won't
13 stop.

14 In the end, she files a statement of use, "she" being
15 Amanda. What does that mean? When you file a trademark there
16 is different kinds of trademarks you could file. One of them
17 is an intent to use. I'm going to use it in the future, I want
18 to hold it. That's what she files. That's what Amanda files,
19 an intent-to-use application. So at some point you have to
20 file the I'm-now-using-it application, and she does. You know
21 what date she picks for the date that this new company used,
22 the new company that's called Zioness Movement Inc., what's the
23 date that Zioness Movement Inc. says is the first time they
24 used the trademark Zioness? August 12, 2017, at the SlutWalk
25 before it existed and when Lawfare was funding it, running it,

0354ZIO3

Solomon - Opening

1 it. Was a project of The Lawfare.

2 At some point because of this, Lawfare's donors start
3 questioning Brooke. It's not just the public who has this
4 question, who really is Zioness? Who is really the front of
5 it? Their own donors start questioning it. So Brooke puts on
6 the Lawfare web page that it was a project of Lawfare. Do you
7 know why? It was. They claim it's infringement to do so. We
8 incubated the project. We started it. We paid for it. We ran
9 it until we handed the reins to Amanda with our license.
10 That's one of their claims. They are mad about that.

11 The other one is that Brooke, at some point, starts a
12 Twitter account, a so-called Twitter, with hashtag Smart
13 Zioness. Why? She is critiquing things Amanda is doing,
14 thinks Amanda is making mistakes. It's America, we can
15 critique people. That's why we are here. We are here because
16 who owns the trademark? Zioness is listed on Lawfare's website
17 as being a project of The Lawfare, which Amanda admitted it is,
18 and because Brooke has a Twitter handle. That's why we are
19 here.

20 So when this is all said and done, we are going to ask
21 you to declare the trademark belongs to Lawfare and that there
22 is no infringement for either Lawfare putting on the website
23 that it started the campaign it started, Zioness, or that
24 Brooke's use of the hashtag a Smart Zioness constitutes
25 infringement when it really is just critique.

0354ZIO3

Solomon - Opening

1 Thank you or all for your patience. Thank you for
2 your time. We will try to make the trial as quick as possible.
3 Thank you very much.

4 THE COURT: Thank you, Counsel. Thank you, members of
5 the jury.

6 The opening statements were outlines from the lawyers
7 of what they expect to prove. The openings are not evidence
8 themselves. It is a picture of what the lawyers expect to do
9 with the evidence.

10 Tomorrow morning we will start with the evidence. I
11 will see you at 10:00 in the morning. Ms. Jones will collect
12 your notebooks and give them back to you in the morning. Don't
13 discuss the case, keep an open mind. You are excused for the
14 day. Go out into the jury room.

15 I'll see you tomorrow. Thank you.

16 (Adjourned to March 5, 2024 at 10:00 a.m.)
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